

आदेश पत्रक

Cr. Appeal No. 2469/99
मामला क्रमांक सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>D.B. HON'BLE SHRI L.C. BHADOO</u> <u>HON'BLE SHRI D.R. DESHMUKH, JJ.</u> <u>20-06-2005</u> Shri R.K. Jain, Counsel for the appellants. Shri U.N.S. Deo, Govt. Advocate for the State. Oral order. The accused/appellant has preferred this appeal under section 374 (2) of the Code of Criminal Procedure, being aggrieved by the judgment of conviction and sentence dated 23-07-1999 passed by the Sessions Judge, Bastar in Sessions Trial No. 42/1999, whereby learned Sessions Judge after convicting the accused/appellant for the commission of the offence under section 302 of I.P.C., sentenced him to undergo imprisonment for life. Brief facts of prosecution case are that on 17-12-1998, deceased Telam Poria had come to Village-Toyamar for marketing and stayed at the residence of PW-2 Kuma Masa, the brother of the accused, at about 8 P.M. in the night. Accused/appellant Kuma Banja came with a bow and arrow and shot Telam Poria with arrow, as a result of which, the arrow pierced in the stomach of Telam Poria. He received injury in the stomach and died spontaneously. On 18-12-1998, at about 6.30 P.M., Kuma Masa PW-2 lodged the report at the Police Station-Bijapur, District-Dantewada (Ex.P-5). On receiving this report, S.R. Sori, S.H.O. PW-1 registered the Crime No. 77/1998 under section-302 of the I.P.C. and took up the investigation, prepared the Panchanama of	

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	the dead body Ex.P-1. He also took into the possession the blood stained soil from the spot and plain soil and the body of Telam Poria was sent for postmortem examination vide Ex.P-8. Dr. D.P. Prajapati PW-4 had conducted postmortem on the dead body of Telam Poria on 19-12-1998 and prepared the report Ex.P-12 in which he found one injury in the stomach of the deceased. He opined that the injury was sufficient to cause death in the ordinary course of nature and the death of Telam Poria was due to internal blood loss and in his opinion, the death was homicidal in nature. After completion of the investigation, charge sheet was filed and during the trial the prosecution has examined 4 witnesses and statement of the accused was recorded by the Trial Court under section 313 of the Cr.P.C. in which the accused has denied his involvement in the crime and stated that he is innocent and has been falsely implicated in the crime. We have heard learned counsel for the accused/appellant and Mr. U.N.S. Deo, on behalf of the State. As far as the nature of death of deceased Telam Poria is being concerned as homicidal in nature. Dr. D.P.Prajapati PW-4 has stated that on 19-12-1998 he was working at Primary Health Centre, Bijapur on the post of Assistant Surgeon. On the requisition of Police, he conducted Postmortem on the dead body of Telam Poria. He noticed that there was an arrow penetration 1" above umbilicus lateral to midline of abdomen and clotted blood was present. On seeing, it is clear that the cause of death is homicidal in nature. The Postmortem report is Ex.P-12. Uma masa	

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	PW-2, who is the real brother of the accused, has stated that the accused came with a bow and arrow in the night at about 8 P.M. and shot at Telam Poria, as a result of which Telam Poria had received the injury in the stomach and died spontaneously. Therefore, in view of the above facts, it is proved that the nature of death of the Telam Poria was homicidal. As far as the involvement of the accused/appellant in crime is concerned, PW-2 Kuma Masa is eyewitness in whose house the accused/appellant had shot at Telam Poria with an arrow, who is the real brother of the accused and stated that on the fateful day Telam Poria came to his house. At about 8 P.M. in the night, the accused/appellant came with bow and arrow and shot at Telam Poria with an arrow, as a result of which, the arrow pierced in the stomach and died spontaneously. On seeing this, he ran away towards the forest and on the next day, he lodged the report (Ex.P-5). Learned counsel for the appellant argued that the conduct of Kuma Masa PW-2 is not natural when the accused/appellant shot at deceased Telam Poria with an arrow, as the accused/appellant is the brother of this witness, why this witness ran away towards the forest. We do not find any substance in the argument for the reason that in the first instance this witness i.e. Kuma masa (PW-2), is real brother of the accused. Therefore, it is unbelievable that this witness has deposed against his own brother in order to implicate him in such a heinous crime without his involvement in the crime.	

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	Moreover, the incident took place in the house of this witness, in the third place, it depends person to person that how he behaves in particular situation. There is no hard and fast rule that in particular situation every person is supposed to behave in a particular manner. Therefore, merely on the ground of running away of this witness after seeing the incident cannot make his evidence doubtful. In cross-examination of this witness, counsel for the accused-appellant was not able to elicit any fact, which make the evidence of this witness unreliable and untrustworthy. Therefore, we are of the considered opinion that the trial Court has rightly relied upon this witness and we do not find any ground taking different view from the view taken by the trial Court. As far as the nature of the offence is concerned, the learned Counsel for the accused/appellant argued that from the evidence adduced by the prosecution it cannot be held that the accused appellant shot Telam Poria with an arrow with an intention to commit his murder. From the available record, it appears that there was some dispute between the deceased and the accused/appellant regarding the paddy, therefore in a fit of anger, the accused/appellant shot at the deceased. In this connection, the law on the point as has been held by the Hon'ble Apex Court in the matter of <u>Mahesh Vs. State of M.P. reported in 1996 (6) Supreme 609</u> was that the deceased objected to the appellant not let his cattle damage the crop. The appellant, however, did not pay any heed to the request of the deceased and instead that he would graze the cattle in that field	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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	and altercation ensued between the deceased and the accused and in that process, the appellant dealt a pharsa blow on the head of the deceased Krishna Kumar, as a result of which, he died on the spot. On these facts, the Hon'ble Apex Court held that in these circumstances the accused during a sudden quarrel without any pre-mediation assaulted the deceased, therefore the offence will fall within exception-4 to Section-300 of the I.P.C. Therefore, the accused was held guilty under section 304 Part-I of the I.P.C. Similarly, in the matter of <u>State of Rajasthan Vs. Satyanarayan reported in 1998 (1) Supreme 433</u>, held on the facts that accused Satyanarayan was neighbourers of Bhima. Some quarrel took place between Bhoridevi, wife of Bhima, and the accused, and there was exchange of words between her and accused Satyanarayan. In that process, the accused assaulted Bhoridevi with an iron pipe. He also injured Ram Gopal and then went back to his house. By that time, Kesar Lal (deceased) brother of Bhima went near the house of accused and started questioning the accused as to why he was quarreling like that in the morning. Thereupon, the accused came out of his house with knife and inflicted a blow on the abdomen of Keshar lal as a result of which his intestines came out and he died. The accused ran away and from that place. On these facts, the Hon'ble Apex Court held that "the respondent had not aimed the blow on any vital part of Ram Gopal or Kesar lal. The blow was aimed at Ram Gopal but as he moved aside, it landed on the stomach of Kesar lal". Therefore, the	

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	Court held that the appellant should have been convicted under section 304 Part-I of the I.P.C. and not under section 302." <u>The prosecution case in the matter of Gend lal Vs. State of M.P. reported in 2003 (1) M.P.L.J. Page No. 46,</u> was that the accused during an altercation with wife dealt some blows on her with two feet bamboo sticks and on account of excessive bleeding she died-No reason or motive for independent witness to have falsely implicated accused-However there was no indication that accused who got enraged on account of some remarks of the deceased during altercation and picked up stick and without any prior ill-will and intention to cause her death-His proved act would not therefore amount to the offence of murder- liable to be convicted under section 304 Part-II and sentenced to rigorous imprisonment for 10 years. The Court is required to look into the facts and circumstances of each case and to ascertain as to whether the accused/appellant had intention to murder the deceased. If we examine the evidence of Kuma Masa PW-2 about the incident, has stated that in the night when Telam Poria was sleeping in his house, the accused came with a bow and arrow, when the deceased Telam Poria said that he will give this year paddy to the accused Kuma Banja, the accused, thereafter shot at Telam Poria with an arrow, which struck in the stomach of the deceased and as a result of which, he died spontaneously. From this, it appears that in the heat of passion Kuma Banja without pre-planning shot at Telam Poria with an arrow, who received injury in the stomach	

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	and died on the spot. Therefore, from the above facts and circumstances, the accused/appellant shot at Telam Poria without an intention to murder. Therefore, this case comes under the exception IV of section-300 and falls under the category of culpable homicide not amounting to murder. As such, the prosecution has not been able to prove the guilt under section 302 of the IPC against the accused appellant, but offence under section 304 Part-I is made out against the accused appellant. In the result, the appeal is partly allowed. The accused is acquitted of the charge under Section 302 of the I.P.C. Instead thereof, he is convicted for the offence under section 304 Part-I of the I.P.C. and sentenced to undergo 10 years of rigorous imprisonment and to pay a fine of Rs. 500/-, in default of payment of fine he will further undergo 4 months rigorous imprisonment. The accused/appellant shall be entitled to set off under Section 428 of the Cr.P.C. for the period already undergone by him either in police custody or in judicial custody. Sd/- L.C. BHADOO Judge	Sd/- Dilip Raosaheb Deshmukh Judge

Satish

(पीठे देखिये)